BORA LASKIN LAW LIBRARY
3 1761 03870 3294

ENVIRONMENTAL LAW
CASEBOOK AND MATERIALS

VOLUME I

D.N. Dewees
Faculty of Law
University of Toronto

Fall, 1994

Prepared with the help of Stefan Matiation

For Use of Students in this Course Only

BORA LASKIN LAW LIBRARY

AUG 30 1994

FACULTY OF LAW
UNIVERSITY OF TORONTO

UNIVERSITY OF TORONTO

ENVIRONMENTAL LAW
CASEBOOK AND MATERIALS

VOLUME I

D.N. Dewees
Faculty of Law
University of Toronto

Fall, 1994

Prepared with the help of Stefan Matiation

For Use of Students in this Course Only

Digitized by the Internet Archive
in 2018 with funding from
University of Toronto

https://archive.org/details/environmentallaw01dewe_1

ENVIRONMENTAL LAW

TABLE OF CONTENTS

VOLUME I

CHAPTER ONE: LIST OF SOURCES

Section One: Books (Texts, Digests, Treatises) 1-1
A. Canada
B. United States

Section Two: Legal Periodicals 1-4
A. Canada
B. United States

Section Three: Non-Legal Periodicals 1-4

Section Four: Environmental Reporters 1-5
A. Canada
B. United States

Section Five: Statutes, Regulations 1-5

Section Six: Bibliographies 1-5

Section Seven: Environmental Policy and Economics 1-6

CHAPTER TWO: INTRODUCTION TO ENVIRONMENTAL PROBLEMS

Section One: The Nature of Environmental Problems

Reforming Regulation, Economic Council of Canada 2-1

Tietenberg, Tom, "Control of Stationary-Source Air Pollution" 2-14

Tietenberg, Tom, "Control of Water Pollution" 2-17

Tietenberg, Tom, "Toxic Substances" 2-20

Section Two: The Canadian Environmental Context

Poch, "Statutory Obligations and Liability" 2-22

Hogg, Excerpt from Canada Act 1982 Annotated 2-26

Fowler v. R. (1980) 2-27

R. v. TNT Canada Inc. (1986) 2-28

R. v. Crown Zellerbach (1988) 2-29

CHAPTER THREE: COMMON LAW: PRIVATE INTERESTS

Section One: Introduction

New Developments and Future Trends 3-1

Section Two: Riparian Rights

John Young v. Bankier Distillery (1893) 3-10

McKie v. The K.V.P. Co. (1948) 3-11

The K.V.P. Company Limited Act, 1950 3-15

Gauthier et al v. Naneff et al (1970) 3-16

Section Three: Private Nuisance

Newman v. Conair Aviation (1972) 3-17

Schenck v. The Queen (1981) 3-21

Gertsen v. The Municipality of Toronto (1973) 3-25

Palmer v. N.S.F.I. (1983) 3-30

Township of Essa v. Atomic Energy Control Board (1981) 3-34

Nedelsky, "Judicial Conservatism in an Age of Innovation" 3-36

Section Four: Trespass

Kerr v. Revelstoke Building Materials Ltd. (1976) 3-43

Friesen v. Forest Protection Limited (1978) 3-47

Section Five: Strict Liability

Rylands v. Fletcher (1868) 3-50

McLaren, "The Common Law Nuisance Actions and The Environmental Battle - Well-Tempered Swords or Broken Reeds?" 3-53

Gertsen v. Municipality of Metropolitan Toronto (1973) 3-56

Metson V. R.W. DeWolfe Limited (1980) 3-57

Section Six: Negligence

Roy Melito v. Lenbro Holdings Limited (1983) 3-61

Gertsen v. Municipality of Metropolitan Toronto (1973) 3-63

Section Seven: Statutory Torts

Suzuki v. "Ionian Leader" (1950) 3-66

Palmer v. N.S.F.I. (1983) 3-67

North York v. Kert Chemical Industries (1985) 3-68

Manitoba Fishermen's Assistance and Polluters' Liability Act, 1970 3-69

Section Eight: Defence of Statutory Authority

Friesen v. Forest Protection Limited (1978) 3-71

Schenck v. The Queen (1981) 3-72

Wiebe v. DeSalaberry (1979) 3-73

Stephens v. Richmond Hill (1956) 3-76

The Public Health Amendment Act, 1956 3-79

Buysse v. Town of Shelburne (1984) 3-80

Tock v. St. John's Metropolitan Area Board (1989) 3-81

Section Nine: Other Defences

Huston v. Lloyd Refineries Ltd. (1937) 3-83

Russell Transport v. Ontario Malleable Iron Co. (1952) 3-84

Section Ten: Problems of Causation

Huber, "Environmental Hazards and Liability Law" 3-85

Brennan, "Causal Links and Statistical Chains" 3-89

"Developments in the Law: Toxic Waste Litigation" 3-94

Palmer v. N.S.F.I. (1983) 3-101

Snell v. Farrell (1990) 3-102

Archibald, "Proof of Causation Revisited" 3-103

CHAPTER FOUR: COMMON LAW: THE PUBLIC INTEREST

Section One: Public Nuisance

Prosser on Torts, "Public Nuisance" 4-1

Hickey v. Electric Reduction (1970) 4-3

Columbia River Fishermen v. St. Helens (1939) 4-7

Section Two: Standing

Islands Protection Society v. The Queen (1979) 4-11

Canadians for the Abolition of the Seal Hunt v. Minister of Fisheries (1980) 4-14

Re Pim and the Minister of the Environment (1978) 4-18

Minister of Finance of Canada et al. v. Finlay (1986) 4-22

CHAPTER FIVE: ENVIRONMENTAL PROTECTION ACT

MOE, "Ontario's Environmental Legislation" (1992) 5-1

Section One: Introductory Cases

R. v. Glen Leven Properties (1977) 5-4

R. v. B.L.S. Sanitation (1977) 5-8

R. v. Toronto Refiners and Smelters (Prov. Ct.) (1977) 5-12

R. v. Toronto Refiners and Smelters (H. Ct.) (1977) 5-16

R. v. Toronto Refiners and Smelters (Div. Ct.) (1978) 5-17

R. v. Zettel Manufacturing (1982) 5-17

Section Two: Approvals

R. v. Canadian International Paper (1974) 5-18

R. v. Adventure Charcoal (1972) 5-22

R. v. Accurate Waste (1982) 5-23

Section Three: Spills

Makuch, "The Spills Bill - An Overview" 5-24

R. v. Power Tank Lines (1975) 5-31

Re Canadian Pacific and Director M.O.E. (1978) 5-36

R. v. Texaco Canada (1984) 5-39

Section Four: Enforcement

M.O.E., "Offences Against the Environment" (1991) 5-43

M.O.E., "Offences Against the Environment" (1992) 5-47

R. v. Canada Metal (1980) 5-50

R. v. Johns-Manville (1980) 5-52

R. v. C.I.P. (1983) 5-55

R. v. B.E.S.T. (1986) 5-57

R. v. B.E.S.T. (case comment) 5-58

R. v. B.E.S.T. (1987) 5-59

Metropolitan Toronto v. Siapas (1988) 5-61

R. v. Blackbird (1990), (1991) 5-63

R. v. Mac's Liquid Disposal Ltd. (1982) 5-64

R. v. Lopes (1988) 5-66

Harry Poch, "Deterring Corporate Polluters" 5-69

CHAPTER SIX: ONTARIO WATER RESOURCES ACT

Section One: Introduction

Campbell, Pearce, Scott & Uzelac, "Water Management in Ontario" 6-1

Section Two: Cases

R. v. City of Barrie (1970) 6-8

Globe & Mail article, July 24, 1980 6-11

R. v. Sheridan (1972) 6-12

R. v. Cherokee Disposals (1973) 6-14

R. v. Liquid Cargo Lines (1974) 6-17

N.C.C. v. Pugliese (1979) 6-18

R. v. Falconbridge Nickel Mines Ltd. (1983) 6-21

CHAPTER SEVEN: FEDERAL LEGISLATION

Section One: The Fisheries Act

Rankin and Leadem, "The Fisheries Act and Water Pollution" 7-1

The Cases

R. v. MacMillan Bloedel (1973) 7-12

R. v. Cyanamid (1981) 7-15

R. v. MacMillan Bloedel (1984) 7-23

R. v. Richmond Plywood (1981) 7-26

Section Two: Canadian Environmental Protection Act

Lucas, "The Canadian Environmental Protection Act" 7-29

Canadian Environmental Protection Act Report for the Period April, 1990 - March, 1991 7-32

Northey, "Federalism and Comprehensive Environmental Reform: Seeing Beyond the Murky Medium" 7-36

Doelle, "Federal/Provincial Power Struggles in Environmental Law" 7-45

Section Three: Enforcement

Blair, "Environmental Enforcement" 7-48

Canadian Environmental Protection Act Report for the Period April, 1990 - March, 1991 7-54

Proctor, "Individual Enforcement of Canada's Environmental Protection Laws: The Weak-spirited Need Not Try" 7-57

CHAPTER ONE **LIST OF SOURCES**

Section One: Books (Texts, Digests, Treatises)
A. Canada

Bilson, Beth (1991) The Canadian Law of Nuisance Toronto: Butterworths.
Private & public nuisance, strict liability and Rylands & Fletcher, defenses, remedies, common nuisance in criminal law, statutes & nuisance.

Canadian Institute, The, (1991) Environmental Law and Regulation, Toronto: TCI.
Binder, 2-day course.

Castrilli, J. F. and Toby Vigod (1987), Pesticides in Canada: An Examination of Federal Law and Policy Law Reform Commission of Canada, Protection of Life Series study Paper, Ottawa: Law Reform Commission of Canada.

Duncan, Linda F., ed., 1985, Environmental Enforcement: Proceedings of the National Conference on the Enforcement of Environmental Law, Edmonton.

Emond, Paul, Environmental Assessment Law in Canada, Toronto: Emond-Montgomery Limited, 1978. [zz later edn?]

Estrin, David, Environmental Law, Toronto: Carswell, 1984.
Section by section discussion of Ontario and Federal laws on water, air, waste, noise, pits and quarries, environmental assessment. Excerpts of acts in appendix.

Estrin, David and John Swaigen, Environment on Trial, 3rd. ed., Toronto: Emond-Montgomery Publications, 1993.
Layman's guide to common law, statutes and regulations. Emphasis on private action.

Franson, M.A.H., R.T. Franson, A.R. Lucas, 1982, Environmental Standards: A Comparative Study of Canadian Standards, Standard Setting, Processes and Enforcement, Edmonton: Environmental Council of Alberta.

Glenn, William, et al. (1988) Toxic Real Estate Manual, Don Mills: Corpus. Binder.
A comprehensive survey of Canadian Toxic real estate law, province-by-province.

Hughes, Elaine L., A.R. Lucas and Tilleman II. Environmental Law and Policy.
Toronto: Emond Montgomery Publications Ltd., 1993.

Mellon, Margaret, Leslie Ritts, Stephen Garrod, Marcia Valiante, The Regulation of Toxic and Oxidant Air Pollution in North America, CCH Canada, 1986.

Transport, sources, effects, oxidants, law & policy in Canada and US, bilateral law and policy, reflections and recommendations.

Muldoon, Paul and Marcia Valiante, Toxic Water Pollution in Canada: Regulatory Principles for Reduction and Elimination, Calgary: Cdn. Institute of Res. Law, 1989.
The problem, law and regulations (Federal, Ontario); reforms: cross-media, source reduction, absolute load not concentration, non-point sources, ecosystems not jurisdictions.

Poch, Harry, (1989), Corporate and Municipal Environmental Law Toronto: Carswell.
Chapters on constitution; deterrence (penalties); environmental insurance; OMOE structure and process; OHS; environmental assessment (municipal); waste disposal. Practical, textual with case footnotes.

Saxe, Dianne, (1990), Environmental Offenses: Corporate Responsibility and Executive Liability, Aurora: Canada Law Book.

Swaigen, John, 1981, Compensation of Pollution Victims in Canada. Ottawa: Economic Council of Canada.

Swaigen, John, ed., Environmental Rights in Canada, Toronto: Butterworths, 1981.
Standing, class actions, public trust, substantive rights; EIA, access to information, regulatory process, accountability in decisions-making.

Swanson, Elizabeth J. and Elaine L. Hughes, 1990, The Price of Pollution: Environmental Litigation in Canada. Calgary: Environmental Law Centre.
An overview of Canadian environmental law for lawyers and laymen. Sort of a short Environment on Trial. Civil litigation, prosecution, reform.

Tingley, Donna, ed., Into the Future: Environmental Law and Policy for the 1990's, Edmonton: Environmental Law Centre, 1990.
Papers presented at a 1989 conference. Public attitudes, government regulation, common law, business & industry, etc. For layman; interesting.

B. United States

American Law Institute, (1989), Superfund Deskbook,

Arbuckle et al. (1991), Environmental Law Handbook 11th edn., Rockville Md.: Government Institutes, Inc.
Layman's review of major US environmental statutes. A few general chapters,

mostly media/Act chapters.

Environmental Law Institute, (1987), Law of Environmental Protection, New York: Clark Boardman. 2 Vols.
Good overview as of 1987. Post binder (updates?). Environmental goals, methods, agencies, procedures & principles; functional programs (environmental assessment, denforcement, NEPA); media programs (air, water, soil); products (toxics, pesticides, biotechnology).

Findley, Roger and Daniel Farber, (1988), Environmental Law in a Nutshell, 2nd. ed. West Publishing Co.
Overview of US environmental law.

Grad, Frank P. (1985), Environmental Law, 3rd. ed., New York: Matthew Bender.